

# The Emerging Pattern of Territorial Seas Policies, and International Cooperation in Fishery Conservation and Development

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## Abstract

In recent years there has been an intensified interaction between "coastal" and "high seas" fishery interests throughout the world. Distant-water fishing on an unprecedented scale has stimulated a defensive reaction in the form of extensions of national fishery jurisdiction off shore. The United States, with important coastal and distant-water fishing interests, is taking a flexible and pragmatic approach to this problem in attempting to work out a policy which will promote maximum utilization of the sea's resources, foster international cooperation in conservation and fishery development and serve the best interests of the United States fishing industry. This developing policy, as exemplified in recent agreements with Japan, the USSR and Mexico, seeks to maintain the greatest possible freedom of fishing consistent with a due consideration for the special interests of coastal fishermen and the conservation requirements of the resource.

## INTRODUCTION

IT IS A QUESTION whether we can speak accurately of an emerging pattern of territorial seas policies and of international cooperation in developing and conserving fishery resources, if by that we mean that we are on the threshold of arrangements which can be expected to remain static for any considerable period of time. We are, however, living through a period of intensified interaction, on the international scale, between forces which are inherent in every fishery situation where more than one fisherman is involved. These are the forces which we characterize broadly as the coastal fisheries and the high seas or distant-waters fisheries, by which we sometimes mean the local fisherman and the fisherman from somewhere else, and sometimes the domestic fisherman and the foreign fisherman. This recent intensification of interaction, stimulated by an unprecedented development of distant-water fishing by certain nations off the coasts of other nations, provoking in turn defensive reactions by many coastal states, is producing, if not a clearly emerging pattern, at least some fairly clear trends which have called for the development of appropriate policies by government.

## SITUATION OF THE UNITED STATES

The United States, because of the nature of its fishing industry, the rich fishery resources which lie off its coasts, and its national commitment to the development and conservation of marine food resources, cannot avoid taking a leading role in this play of forces on the international stage. Although about 85 percent of our catch comes from our own coastal waters, our people carry

on important fisheries for tuna and shrimp off the coasts of Central and South America, and our fishermen also have long established fisheries off the Atlantic and Pacific coasts of Canada. In recent years the resources off our own coasts have attracted large-scale fishing efforts by the USSR and Japan and lesser activities by an increasing number of European, Asian, and American countries. In the North Pacific, we have a large industry based on a far-ranging anadromous fish, the salmon, which is vulnerable to capture on the high seas and which we consider presents a special interest. Our situation is further complicated by the small but growing investment by the United States fishing industry in fisheries based in foreign countries. These varied factors produce pressures on Government to support maximum freedom of operation for our distant-water fisheries on the one hand and for more extensive protection for our coastal fisheries on the other. It is the difficult task of the policy makers to marry these conflicting demands into a reasonably consistent line that we can expect the other nations to accept.

### SITUATION IN OTHER COUNTRIES

Some other major fishing nations face the same dilemma that the United States does, although the balance between coastal and distant-water interests is different in each case. Japan has been a strong and consistent advocate of the greatest freedom of operation for distant-water fishermen while, be it noted, doing a great deal domestically to protect small coastal fishermen from the competition of their better-equipped compatriots. The Japanese fishing industry has been confident of its ability to outcompete other fishermen anywhere, and the Japanese Government has backed its industry by supporting the narrowest possible limits of fishery jurisdiction. In 1937 and again after World War II, the Japanese industry embarked upon high seas salmon fishing developments in the North Pacific which evoked strong reactions from the coastal countries. In recent years, the operations of Japanese fishing vessels have been subjected to restrictions in many parts of the oceans by many countries, including Korea, the USSR, Communist China, New Zealand, Indonesia, Mauritania and Ecuador.

Where it has been necessary, Japan has been pragmatic about entering into agreements with other countries which limit the access of her industry to certain resources, for example, with the United States on North Pacific salmon, halibut and king crab, with the USSR on salmon, king crab and herring, and with New Zealand on the snapper fishery. At the same time, Japan has maintained her legal position that 3 miles is the maximum admissible extent of a nation's fishery jurisdiction in the absence of a specific international agreement to the contrary. Recently, however, there have been signs of a growing sentiment, especially in the fishing industry of northern Japan, for some extension of jurisdiction to cope with encroaching Soviet competition, particularly in the saury fishery, and apprehension over growing competition from the expanding Korean fishing industry.

The USSR has come rapidly to the fore in distant-water fishing in many parts of the world, employing organized fleet operations on an unprecedented scale supported by well-planned programs of research and exploratory fishing. The Soviet Union is more dependent than Japan on distant-water fisheries, yet it has been less aggressive than Japan in supporting the case for freedom of

high seas fishing. The Soviets claim a 12-mile territorial sea and recognize the jurisdiction of other states to that distance from shore. They have followed the example of the United States and Canada in asserting the controlling interest of the coastal state in salmon on the high seas, and have agreed to cooperate in the conservation of North Pacific fur seals by abstaining from pelagic sealing. The Soviets are reportedly buying large numbers of licenses to fish within 200 miles of the Argentine coast, and they have entered into bilateral agreements with the United States which limit their operations in some areas beyond our contiguous fishery zone.

The defensive reaction of coastal states against foreign distant-water fishermen is seen in its most advanced form in Latin America, where land-oriented nations with weakly developed fisheries and strong nationalistic traditions associated with territorial questions have opted for broadly extended jurisdiction as the solution to their fishery problems. Chile, Ecuador, and Peru have asserted jurisdiction over fisheries to 200 miles from their shores since the Santiago Declaration of 1952. Since that time, several nations of Central America have followed their example, Argentina has recently gone the same route, and a number of Latin American countries have 200-mile measures before their legislatures or under study of their governments.

In Africa, the developing countries are awakening to the opportunities presented by the fishery resources lying off their shores, and a number of them are preparing, with the aid of the developed countries, to exploit those opportunities. At the same time, the operations of foreign fishermen off Africa have become increasingly conspicuous in recent years, producing a situation ripe for reaction in the form of jurisdictional extension. South Africa is struggling to maintain control of the management of its developed coastal fisheries in the face of new pressure on the resources from factoryship operations.

In the Indo-Pacific region, New Zealand has recently extended her fishery jurisdiction to 12 miles in response to her fishing industry's concern over Japanese operations near her shores, and Australian fishermen and fishery administrators appear to feel increasingly threatened by Japanese and Soviet operations. Indonesia and the Philippines are definitely in a defensive stance against foreign distant-water fishermen within the lines which they have drawn to encompass all of the waters of their archipelagoes.

Thus in many parts of the world the interaction between coastal and distant-water fishery interests has already produced reactions adversely affecting nations' access to fishery resources. Given the increasing competition for food resources which the growing world population makes inevitable, the great mobility of modern fishing fleets, and the distribution of developed and developing countries in the world, this kind of reaction seems likely to reach to every part of the oceans except the North Atlantic and North Pacific, and even there defensive readjustments of baselines are in sight. It is up to the developed fishing nations to work out policies to contain this trend or be increasingly shut out from access to resources.

Modern communications and more active traffic on and above most parts of the sea have given coastal nations a better knowledge of what is going on off their shores and an extended sense of territoriality with respect to the adjacent waters. Although the distant-water fishermen of the developed countries do not always act as if they realized it, it is no longer possible to approach

and fish any foreign coast with impunity, as if its inhabitants had neither rights nor interests nor a government capable of looking after them. Whether it is an 80-ship Soviet fleet off Oregon or a single shrimp boat off Yucatan, note will be taken, and a reaction will be forthcoming.

It does not appear at the present time that any developed country is prepared to use force to gain for its distant-water fishermen access to resources off the shores of other countries. The realities of present international politics, and particularly the competition of the great powers for the favor of the less developed countries, limit the pressures that can be applied for this purpose to far below the gunboat level. This is not to say that gunboats do not occasionally play a part in fishery disputes between nations even today, but it is invariably in a different context.

## TERRITORIAL SEA POLICIES AND INTERNATIONAL COOPERATION

It seems obvious that broadly extended exclusive national jurisdiction is inimical to international cooperation in fishery conservation and development. The less free international access there is to the sea's resources, the less there is to cooperate about. Since territorial sea or fishery zone limits, however they may be extended, can rarely be expected to coincide with the distribution of resources in the ocean, they cannot effectively protect resources, particularly highly migratory ones, from exploitation by foreigners, but they may very effectively discourage international cooperation for the study and conservation of the resources. On the other hand, where there is international access to resources and that access is used with the proper regard for the interests of other nations, cooperation in research and conservation becomes essential and mandatory.

Likewise, the distant-water fishing nations, which have the most to contribute to international cooperation in fishery development, can hardly be expected to cooperate enthusiastically in developing the fisheries of nations which arbitrarily exclude them from access to resources by extending their jurisdiction. Perhaps they should, in the long view, cooperate to develop those who exclude them on the theory that extending jurisdiction is a strategy of weakness and that its proponents may gradually cease to support it as they acquire distant-water fishing capability of their own. This is probably too distant and uncertain a prospect to stimulate any very active cooperation.

## DEVELOPMENT OF A POLICY

In the present situation, where the factors noted above and many others are engaged in a complex and rapidly changing interplay, the keynote for policy makers must be flexibility. It is in order to be skeptical of any broad, sweeping and simple solution, like turning the world's fisheries over to the United Nations for management. Every resource and every fishery present their own peculiar problems. We in the United States have an investment of years of work and experience in dealing with certain of our international fishery problems, and the results in some cases have not been altogether unsatisfactory. Furthermore, there are many parts of the rapidly changing world fishery picture where the best interests of our fishing industry are not yet so clearly apparent that we can safely count on others to look after them. For the present we must proceed flexibly, pragmatically and cautiously, dealing with each of

our international fishery problems on its own terms. When we have attained a good degree of success at this level, it may seem advisable to shift our emphasis to broader regional arrangements, and perhaps some day, when we have learned more than we know now, we may be able to prescribe detailed solutions for international fishery problems on a worldwide basis. This is only to say that we must walk before we can run, and yet our walking must at times be fast and shifty, for we are under urgent pressures, on the one hand from some elements of the industry in the northwest and the northeast who seem ready to opt for 200 miles today, and on the other hand from those in California and on the Gulf Coast who seek to keep the greatest possible freedom of operation for their distant-water fisheries. Meanwhile, new extensions of jurisdiction flare up like tongues of flame in various parts of the world, threatening to merge into a fire that may dry up all freedom of fishing on the high seas and turn the oceans into a crazyquilt of exclusive national lakes.

We believe that such a development would seriously obstruct the job of increasing food production from the sea, to which our Government has made important commitments, and would stultify international cooperation in research and conservation. At the same time we have to recognize that the predominant worldwide trend is toward extended jurisdiction, indeed, we contributed to that trend last year when we extended our fishery jurisdiction to 12 miles. The 3-mile limit which we so long defended seems, as far as fisheries are concerned, irrevocably gone as a viable position. Our problem is how to arrest this trend before it comes to interfere with production and cooperation even more seriously than it does at present. The way we propose to do this is to offer in place of the sterile strategy of exclusive jurisdiction what we can only characterize as a reasonable consideration on the part of the high-seas fishermen for the interests of the coastal fisherman. What constitutes a reasonable consideration and what are the real interests involved will have to be determined in each case by joint study and negotiation. Certainly a willingness on both sides to cooperate in scientific research on the resources and in the institution of necessary conservation measures is implicit in this approach. Probably there must also be a willingness on the part of the high-seas fishing country to cooperate in developing the capability of the coastal country to share in the harvest of the resources off its shores, if it has the ambition to do so.

The elements of a developing policy along these lines can be seen in the fishery agreements which the United States has made in the last few years with Japan and the Soviet Union and most recently with Mexico. We do not believe that useful resources of the ocean should go unharvested simply because of legal claims to jurisdiction, and therefore we have been willing to permit foreign fishermen to exploit resources that we were not fully utilizing. We do not believe that the established interests of coastal fishermen should suffer because of the incursions of foreign fleets into their accustomed fishing grounds, and therefore we have negotiated limitations on the operations of foreign fishermen even beyond 12 miles, where they impinged on the interests of our fishermen. We believe that international fishery agreements must be consistent with the conservation requirements of the resources as revealed by the results of cooperative scientific research, and we have included provisions for such research in the agreements that we have made.

It is recognized that this policy does not offer a solution to all of the problems of international fisheries and that it is still inadequate in some ways as a solution to the limited range of problems with which it is designed to deal. It is expected that it will be further developed, amplified and modified in the course of renegotiating the existing agreements and negotiating additional agreements in the future, with countries whose fishermen come to fish off our shores and countries off whose coasts our distant-water fishermen operate. Its objective will, however, remain the same, and that is the broadest possible freedom for American and foreign fishermen to harvest the resources of the seas, restricted only by the demands of conservation and a reasonable consideration for the interests of coastal fishermen.